

REMARKS

Claims 1-70 are pending in the application. Claims 1-44 and 54-62 have been withdrawn as being directed to a non-elected invention. Applicant reserves the right to continue the prosecution of the non-elected inventions in one or more separately filed divisional patents without prejudice or disclaimer. Claims 45-53 and 63-70 have been rejected.

The Examiner rejected Claims 45-47, 68, and 70 under 35 U.S.C. § 103 as being obvious over Kaye, U.S. Patent No. 5,390,819 ("the Kaye Patent"). The Examiner also rejected Claims 48-53 under 35 U.S.C. § 103 as being obvious over the Kaye Patent in view of James, U.S. Patent No. 2,415,012 ("the James Patent"). In addition, the Examiner rejected Claims 63-68 under 35 U.S.C. § 103 as being obvious over the Kaye Patent. Applicant respectfully traverses these rejections on the basis of the arguments previously submitted in the Notice of Non-Compliant Amendment and Response to Office Action filed on January 25, 2006, the Response to Office Action filed on October 13, 2006, the Response to Office Action filed on July 3, 2007, the Response to Office Action dated March 19, 2008 and Declaration of Larry E. Wittmeyer, Jr. submitted therewith (**with the clarification noted below**) and the following additional arguments in support of patentability.

The Examiner maintains that it would have been obvious to use the structured stack of flexible sheets shown in the Kaye Patent as a recreational toy because the stack, when expanded, will provide for recreation to a user. Yet there is no evidence indicating that repositionable notepads or other adhesive notepads were suggested or promoted for use as a recreational toy prior to the Applicant's invention. To the contrary, the Kaye Patent suggests that the stack of sheets be used in a dispenser. The Declaration of Larry E. Wittmeyer, Jr., the inventor of the subject invention previously submitted provides evidence that other parties did not use or

promote the use of repositionable notepads as a recreational toy prior to the date of the invention. Nothing has been presented by the Examiner to contradict that evidence.

It is noted that a clarification should be made to the Response to Office Action filed on March 19, 2008 and Declaration of Larry E Wittmeyer, Jr. submitted therewith. In that Response and supporting Declaration, it was noted that 3M had begun selling repositionable notepads in conjunction with the Slinky® brand name. The fact that 3M had begun marketing this product with the Slinky® brand name was cited as evidence of copying to support the patentability of the present invention. Upon further investigation, Mr. Wittmeyer has learned that the 3M products sold in conjunction with the Slinky® brand name do not have repositionable adhesive on successive sheets disposed on alternate adjacent opposite edges as required by the present claims. Instead, the 3M products comprise successive sheets having adhesive on the same edge. Thus, while the note pads are being sold in conjunction with the Slinky® brand name, which was not done by 3M prior to commercialization of the present invention, such 3M notepads are not being sold as a toy as claimed by the present application.

Nonetheless, it is respectfully submitted that the Kaye reference only discloses the use of successive sheets of paper with adhesive on alternate adjacent opposite edges only for use in conjunction with a dispenser. There is absolutely no evidence to suggest that the stack could be used as a recreational toy.

In view of the foregoing remarks, it is respectfully submitted that the claims are in condition for allowance and eventual issuance. Such action is respectfully requested. Should the Examiner have any further questions or comments that need be addressed in order to obtain allowance, he is invited to contact the undersigned attorney at the number listed below.

Acknowledgement of receipt is respectfully requested.

Respectfully submitted,

By: 

Penny R. Slicer, Reg. No. 34,017
STINSON MORRISON HECKER LLP
1201 Walnut Street, Suite 2900
Kansas City, MO 64106-2150
Telephone: (816) 842-8600
Facsimile: (816) 691-3495
Attorney for Applicant